

# THE TAX STRUCTURE OF THE STATE OF OHIO

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The last major revision of the tax structure of the State of Ohio took place during the 1930's. This came as a result chiefly of two factors: (a) an amendment to the constitution in 1929;<sup>1</sup> (b) the Great Depression which began in late 1929 and continued without surcease throughout the decade of the Thirties. Each of these will be discussed in turn.

Prior to the changes made in the property tax law in 1931 Ohio had been known as a "uniform rule" state. This goes back to an act passed by the General Assembly in 1846 which was introduced by Alfred Kelley, Representative from Cuyahoga County. This legislation provided for taxation by a uniform rule.<sup>2</sup> Five years later (1851) the members of the Constitutional Convention wrote an entirely new article into the constitution.<sup>3</sup> This was Article XII bearing the title "Finance and Taxation." There were only six sections in the document submitted to the electorate in 1851 and ratified by it. One of these has been repealed while seven others have been added.

The ink was scarcely dry on the new constitution when the court was called upon to interpret the second section of Article XII.<sup>4</sup> The court held that "a corporate franchise, therefore, being a mere privilege or grant of authority by the government, is not *property of any description*". It follows that such taxes did not come under the limitations upon the legislative power expressed in section two.<sup>5</sup> It also set forth a

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<sup>1</sup> Article XII, §2 effective January 1, 1931.

<sup>2</sup> 44 Ohio Laws 85. Also Curwen's Revised Statutes, Volume II, page 1260. Actually the words "uniform rule" do not appear in the Kelley act.

<sup>3</sup> A slight exception should be made here in the interest of accuracy. The Constitution of 1802 in Article VIII, Bill of Rights, §23, did place one limitation upon the power of the General Assembly to levy taxes. This section provided "that the levying of taxes by the poll is grievous and oppressive; therefore, the legislature shall never levy a poll tax *for county, or state purposes*" (emphasis added.). This section became section 1, Article XII of the Constitution of 1851. The wording was changed slightly in 1912 so as to include all governmental units. Furthermore, only Maryland, Ohio, Utah, and Oregon have poll tax prohibitions written into their constitutions at the present time. One can follow the stream of migration westward in this section.

<sup>4</sup> Exchange Bank of Columbus v. Hines, 3 Ohio St. 1 (1853). The opinion was written by Chief Justice Thomas W. Bartley. Earlier, Chief Justice Bartley had written the opinion in Teaff v. Hewitt, 1 Ohio St. 511 (1853) wherein the Court defined chattels and fixtures. The latter case is basic to recent decisions with respect to the classification of tunnel kilns, oil refineries, blast furnaces and the like as chattels rather than fixtures.

<sup>5</sup> In Lewis Baker v. Cincinnati, 11 Ohio St. 534 (1860), the Court held that the legislative power was vested in the General Assembly by the first section of Article II and that "the power of taxation is included in the legislative power."

definition of the term "uniform" as applied to taxation. It is worth while to quote the court on this point.<sup>6</sup>

Taxing by a uniform rule requires uniformity, not only in the *rate* of taxation, but also uniformity in the *mode* of the assessment upon the taxable valuation . . . . But this is not all. The uniformity must be coextensive with the territory to which it applies. . . . But the uniformity in the rule required by the constitution, does not stop here. It must be extended to *all property* subject to taxation, so that all property may be taxed alike, equally—which is taxing by a uniform rule. . . . There must be uniformity in the tax upon all the different articles of property, as well as uniformity in the tax upon each.

It should be clear from this statement by the Court that the legislature had little leeway in devising a tax system so far as property was concerned. In spite of this very severe limitation upon the taxing power, no immediate attempt seems to have been made to amend Section two of article XII. The Constitution of 1851 did, however, provide both for its amendment and for calling a convention "to revise, alter or amend it."<sup>7</sup>

The question of calling a Convention was submitted to the voters in 1872 and the electorate acted favorably upon it. The proposed constitution was submitted to the people on August 18, 1874 and rejected by a vote of 250,169 to 102,885.

The proposed constitution of 1874 contained "Article XIII, Revenue and Taxation" very similar to Article XII of the constitution of 1851. Section three read as follows:

Laws shall be passed taxing, by a uniform rate, all real and personal property, according to its value in money, to be ascertained by such rules of appraisement as may be prescribed by the General Assembly, so that all property shall bear an equal proportion of the burdens of taxation, provided, that the deduction of debts from credits may be authorized.

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In our former (1802) constitution it was limited in one particular, the prohibition of a poll-tax. In the present, (1851) it is regulated in other particulars. Section 2, of Article 12, [sic] is not a grant of power, but a regulation of the power already granted in the first section of the second article. The expression is, 'laws shall be passed,' not that the 'general assembly shall have power to pass.' So of every provision in the twelfth article, they either prohibit or regulate the exercise of the powers of taxation in specified instances." This is only the earliest among a long series of opinions by the Court that the legislative grant of power, including that of taxation, is found in the first section of Article II. For a more recent opinion in support of this see *Haefner v. Youngstown*, 147 Ohio St. 58 (1946). This case is also important with respect to the preemption doctrine; see *Glander and Dewey, Municipal Taxation: A Study of the Pre-emption Doctrine*, 9 OHIO ST. L. J. 72 (1948).

<sup>6</sup> *Exchange Bank v. Hines*, 3 Ohio St. 15 (1853).

<sup>7</sup> Article XVI.

This section appears to give the General Assembly somewhat greater latitude in tax legislation than the corresponding section of the Constitution of 1851. As a result of its rejection by the electorate there was, of course, never an opportunity to discover just how great this difference was.

In 1889 another attempt was made to amend section two.<sup>8</sup> It provided, among other things, that "the general assembly shall provide for the raising of revenue for the support of the state and local governments; *but taxes shall be uniform on the same class of subjects*" (Emphasis added). The remainder of the section was concerned with the possible exemptions from taxation. Had this amendment been ratified by the electorate it would have permitted the General Assembly to classify property for purposes of taxation.<sup>9</sup>

In accordance with the requirement of section 3, Article XVI of the Constitution of 1851 the question of calling a convention "to revise, alter or amend" the Constitution was submitted to the electorate at the general election in 1891. Only 99,784 electors favored holding such a convention while 161,722 were against it. At the same election an amendment which would change section two of article XII was also placed before the electorate.<sup>10</sup> It too was defeated. Although those voting on the amendment favored it by 303,177 to 65,014, it lost because the total vote cast at the election was 795,031 and thus required an affirmative vote of 395,516 in order to be ratified.

The rapid development of the business corporation as well as the perennial need for revenue made it seem desirable to be able to impose franchise taxes. The amendment of 1891 would have permitted the General Assembly to enact such legislation. The pertinent part of section two as proposed is worth quoting:

Laws *may* be passed which shall tax by a uniform rule all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and all real and personal property according to the true value in money. *In addition thereto, laws may be passed taxing rights, privileges, franchises, and such other subject matters as the legislature may direct.* . . .  
(Emphasis added).

The remainder of the section contained the earlier provisions relating to exemptions.<sup>11</sup> It is notable that this amendment, had it been ratified,

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<sup>8</sup> Senate Joint Resolution No. 52, 86 Ohio Laws 726 (1889).

<sup>9</sup> The Constitution of 1851, Article XVI, §1, required a majority of those voting at the election to favor the amendment in order to ratify it. There were 780,304 votes cast at the election thus requiring an affirmative vote of 390,152 to ratify the amendment. The total vote on the amendment was 518,706 of which only 245,438 favored ratification. Thus the amendment failed by a vote of 144,714.

<sup>10</sup> House Joint Resolution No. 63, 88 Ohio Laws 935 (1891).

<sup>11</sup> The usual provision for the power to exempt personal property of individuals to an amount not exceeding two hundred dollars was omitted. Apparently this was to be left to the discretion of the legislature.

would have given the General Assembly much greater freedom in the enactment of tax legislation.

In 1893 the General Assembly resubmitted the proposed amendment of 1891 to the electorate.<sup>12</sup> This amendment suffered the same fate as that of 1891. Although a majority—322,422 to 82,281—of those voting on the amendment favored it by nearly four to one it failed to receive the necessary majority of the total vote of 835,604 cast at the election.

Many individuals felt that no change could be made in the Constitution unless it was supported by one or both of the great political parties.<sup>13</sup> In response to this point of view the General Assembly enacted the Longworth Law.<sup>14</sup> This act permitted a political party to take a position for or against a proposed amendment. Following this action in state convention it was to be certified to the Secretary of State who was to print this on the party ticket. As a result, if an individual voted a straight ticket, he would also be favoring the position of the state convention on amendment. The act was held to be constitutional by the Supreme Court.<sup>15</sup>

In spite of the many failures to amend section two an attempt was made again in 1903.<sup>16</sup> This time it had the advantage, if any, of the provisions of the Longworth Act. In all, five amendments were submitted to the electorate at that time. The Republicans, in their platform, endorsed the taxation amendment but did not place it on their ticket. The Democrats, on the other hand, not only endorsed it but placed it on their ticket. As the total vote cast at the election in 1903 was 877,203 it required a favorable vote of 438,602 in order to become effective. Although the vote on the amendment was 326,622 to 43,563 or nearly seven and a half to one in favor, it failed by almost 112,000 to receive the necessary votes. Since the Republicans were in control at the time the resolution was submitted, it seems a little strange that it was not certified to the Secretary of State in order to have it placed upon their ticket.

The amendment of 1903, had it been ratified, would have gone far toward restoring the situation which existed prior to the adoption of the Constitution of 1851. While it retained the 1851 provisions with respect to exemptions, the first two sentences gave the General Assembly

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<sup>12</sup> House Joint Resolution No. 44, 90 Ohio Laws 384 (1893). It may be of interest to note that the same General Assembly passed House Joint Resolution No. 53 (90 Ohio Laws 385) which provided for "appointing a committee to investigate the subject of taxation." This committee submitted the now famous Tax Commission Report of 1893.

<sup>13</sup> See EVANS: A HISTORY OF TAXATION IN OHIO 163 (1906).

<sup>14</sup> 95 Ohio Laws 352 (1902).

<sup>15</sup> State v. Laylin, 69 Ohio St. 1 (1903).

<sup>16</sup> Senate Joint Resolution No. 28, 95 Ohio Laws 962 (1902).

broad discretion with respect to the taxation of property. They are worth quoting:

The general assembly shall provide for the raising of revenue for all state and local purposes in such a manner as it shall deem proper. The subjects of taxation for state and local purposes *shall be classified* [emphasis added], and the taxation shall be uniform on all subjects of the same class, and shall be just to the subject taxed.

Had the amendment been ratified it would have been mandatory for the General Assembly to classify property for purposes of taxation.

The proponents of a change in section two did not give up easily. At the very next session of the General Assembly another attempt was made to amend the section.<sup>17</sup> This time, however, the change was limited to broadening the exemptions. After making the usual provision that laws shall be passed taxing real estate and personal property, both tangible and intangible, by a uniform rule, it stated that "bonds of the state of Ohio, bonds of any city, village, hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds shall be exempt from taxation." The electorate ratified this amendment at the election in 1905 by nearly four and three-fourths to one or 655,508 to 139,062. This provision continued to plague us for nearly a decade. The injustices arising from the assumption that all forms of property are homogeneous for purposes of taxation were not attacked by this amendment. In 1851 most wealth was in the form of tangible property, real and personal, and wealth and income therefrom were fairly equally distributed. By 1900 the picture had changed markedly. The large business corporation had become a reality. One need only call to mind that one of the great corporations of all time—the Standard Oil Company—was organized by an Ohioan, John D. Rockefeller. Obviously, intangible personal property had become far more important in our economy.

A recognition of the growing importance of personal property, particularly intangible, led many to question the general property tax. To tax the tangible property—both real and personal—and the documentary evidence—intangible personal property—of the ownership seemed to be double taxation. More specifically, to tax a farm and also the mortgage on that farm did seem to be taxing the same thing twice. Some would exempt such property altogether; others, recognizing the fact that the mortgagor and the mortgagee, for example, might live in different taxing districts of the state or even in different states which must raise revenue through taxation, favored low rates on intangible personalty. This would, of course, lead to the classification of property as one way out of the situation.

In 1908 the General Assembly decided to submit a classification

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<sup>17</sup> House Joint Resolution No. 19, 97 Ohio Laws 652 (1904).

amendment to the Constitution.<sup>18</sup> The exemption of bonds of the state of Ohio and its local governments which was added to section two, Article XII in 1905 was included as were those contained in the original section. The real difference appeared in the first part of the section which read as follows:

The general assembly shall have power to establish and maintain an equitable system for raising state and local revenue. It may classify the subjects of taxation so far as their differences justify the same in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The power of taxation shall never be surrendered, suspended or contracted away.

Had this amendment been ratified the taxpayers of Ohio would not have had to wait for nearly a quarter of a century for relief from the general property tax. Although the vote on the amendment was 339,747 affirmative to 95,867 negative it failed to receive the necessary majority of the votes cast at the election and was, therefore, defeated.

It will be recalled that the Constitution of 1851 required that the question of calling a convention "to revise, alter or amend" was to be submitted in 1871 and every twentieth year thereafter.<sup>19</sup> In accordance with this provision, the question was submitted to the electorate at the November election in 1910. The vote was overwhelmingly in favor of such a convention.<sup>20</sup> The delegates were elected the following November. The Convention met January 9, 1912 and was in session eighty-three days. It did not rewrite the Constitution in its entirety but, instead, submitted forty-one amendments, including a schedule. Involved were seventy-five sections, not including the schedule. Eight of the amendments were rejected and, of course, thirty-three approved by the electorate at the special election held September 3, 1912. Of the sections ratified, forty were new, twenty-six amended existing sections, and one repealed an existing amendment.

So far as the original six sections of Article XII were concerned the first, second and sixth were amended. Five new sections—seven through eleven—were added. Sections seven, eight and nine related to income and inheritance taxes. Section ten made it possible for the General Assembly to enact franchise, excise, and severance taxes. The state and its local governments were required to levy sufficient taxes to pay interest on and to redeem any bonded indebtedness by the eleventh section.

Section two of article twelve returned, for all practical purposes,

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<sup>18</sup> Senate Joint Resolution No. 53, 99 Ohio Laws 629 (1908).

<sup>19</sup> Article XVI, §3.

<sup>20</sup> Out of a total vote of 932,262 cast at the election, 693,263 favored calling a convention while only 161,722 opposed.

to what it had been prior to the amendment of 1905. In other words, the exemption of state and local bonds granted by that amendment was now removed. Of course, those bonds which were issued during the period when that amendment was in effect and still outstanding continued to be exempt under the provisions of the new amendment. The removal of this exemption was a step in the right direction. It is difficult to understand why a group of men which wrote the initiative and referendum, the permission to impose graduated income and death taxes, and an article on municipal corporations could not see the defects of the second section of Article twelve and seek to remedy them. It could be argued that, if a graduated income tax is imposed, a tax on personal property, and in particular, on intangible personalty is absurd and unjust.

One small change was made in the exemptions. Formerly, the legislature might grant an exemption not to exceed two hundred dollars on personal property. This was changed to five hundred dollars.

For a considerable time there had been a realization that the taxation of intangible personalty involved a form of double taxation. This seemed clearest in the case of real estate and the mortgage thereon although the same would hold true of a chattel mortgage. The legislature resolved to give the electorate the opportunity to vote on an amendment permitting the solution of this problem.<sup>21</sup> It provided:

Laws may be passed to provide against the double taxation that results from the taxation of both the real estate and the mortgage or the debt secured thereby, or other lien upon it . . .

It left untouched the same problem with respect to stocks and bonds of corporate enterprises.

Throughout the Twenties the difficulties with the general property tax had continued to increase. While it is possible, without too much difficulty, to assess real estate and tangible personalty and place it upon the tax list and duplicate, it is quite another matter to find and assess intangible personalty.

The proponents of the classification of property for purposes of taxation decided to make another attempt. They were able to convince the General Assembly to submit an amendment to the electorate in 1925.<sup>22</sup> Again it was the first part of the section which was to be amended. Otherwise there was only a slight change from the amendment ratified in 1918.<sup>23</sup> The first paragraph provided that

Laws shall be passed, taxing by a uniform rule all real estate and improvements thereon and all tangible personal property,

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<sup>21</sup> House Joint Resolution No. 34, 107 Ohio Laws 774 (1917).

<sup>22</sup> House Joint Resolution No. 27, 111 Ohio Laws 539 (1925).

<sup>23</sup> The electorate had earlier (1921) ratified an amendment to Article VIII in the form of §2(a) providing for the payment of a "bonus" to the veterans of World War I. It was necessary to issue \$25,000,000 in bonds. These were exempt from state and local taxation by the provisions of Article VIII, §2(a). This exemption was carried in the proposed amendment of §2 of Article XII.

according to their true value in money, excepting motor vehicles which shall be taxed as may be provided by law. *All moneys, credits, bonds, stocks and all other intangible property, shall be taxed as may be provided by law.* (Emphasis added.)

Although this proposal left much to be desired from the point of view of freedom of the legislature to design a sound tax system, it was a decided improvement over the existing provisions. Certainly intangible personalty could be classified and low rates applied. Unfortunately the electorate did not see fit to make the change and the amendment was defeated.

Four years later (1929) another attempt was made to change the section. This time, however, it was drawn in such a manner that it represented a compromise. Complete classification was not permitted under the terms of the amendment since "land and the improvements thereon shall be taxed by a uniform rule." The permissive exemption of five hundred dollars of personal property of each individual was removed and left to the discretion of the General Assembly. Other exemptions which the legislature might grant were unchanged. Perhaps the most noteworthy restriction in the amendment was the fifteen mill limitation. For two decades the State of Ohio and its local subdivisions had operated under the Smith One Per Cent Law.<sup>24</sup> This had broken down repeatedly during the period. The proponents of the general property tax had insisted on this restriction on the legislative power. This was an attempt, and a successful one among many, to write legislation into the constitution. It is the writer's opinion that if a legislative body or a governmental executive consistently refuses to heed the wishes of the electorate, the latter will find a way to write what it desires into the constitution. An excellent witness to this is the present proposal to set a maximum limit on federal income and death tax rates.

As implied above, the change in section two of Article XII appeared at the beginning. It will not be out of place to quote the first part of the amendment:

No property, taxed according to value, shall be so taxed in excess of one and one-half per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and the improvements thereon shall be taxed according to value.

This amendment was ratified by a vote of 712,538 to 510,874. As a result the General Assembly meeting in 1931 would have an opportunity to rewrite our property tax law. Furthermore, it would be

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<sup>24</sup> Senate Bill No. 4, 101 Ohio Laws 430. The act became law without the signature of Governor Harmon on May 24, 1910.



possible to classify personalty if the legislature should so desire. It is necessary to note, however, that although the General Assembly could not classify "land and the improvements thereon" it did have the power to place them on the tax list and duplicate at any percentage of value which it cared to do. Without laboring the point the careful reader will note that, while the amendment of 1918 carried the phrase "according to its *true* value in money," the amendment of 1929, with respect to lands and improvements, merely states "according to value." The term "true value" appears only in connection with the fifteen mill limitation. For example, if the legislature provided that real property must be placed upon the assessment rolls at fifty per cent of its true value in money it would follow that the total tax must not exceed thirty mills which, of course, would not be in excess of fifteen-mills of one hundred per cent of its true value in money. The very fact that "true value" appears in the first part of the amendment and not in respect to land and improvements indicates that those drafting the amendment were aware of the distinction.

A slight change in the wording but a great change in its effects upon legislation was the amendment of 1933. The words "one per cent" were substituted for "one and one-half per cent."<sup>25</sup> This change came as a result of an initiative petition.<sup>26</sup> It was submitted to the electorate at the general election on November 7, 1933. The vote in favor of the "ten-mill limitation" was approximately one and one-half to one or 979,061 affirmative votes to 661,151 negative. In only two counties—Hamilton and Vinton—did the votes against the amendment exceed those for it. This is the last change that has taken place in section two of Article XII. Nearly a quarter of a century has elapsed since then with no attempt to amend it.

The second important factor which has influenced our tax system during the last three decades (nearly) was the Great Depression which began in 1929. Very shortly thereafter state and local revenues began to decline. It became more and more difficult to finance the various functions of government. To make a bad situation worse certain functions, particularly welfare, could no longer be supported by private charitable and religious organizations. They found it more and more difficult to raise funds for such purpose. Nothing was left to do but turn this function over to government. Along with this people began to be more aware of the seriousness of unemployment, child welfare and financial insecurity of the aged to mention a few of the problems. There was a demand—a very insistent one—that there "ought to be a law" to take care of these things. The upshot was a need for greater

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<sup>25</sup> 115 Ohio Laws, Part 2, 446 (1933).

<sup>26</sup> Article II, §1(a), sets forth the requirements for an initiative petition to amend the constitution.

revenue which meant either increased rates in the case of existing taxes or new taxes.

The fifteen-mill limitation, and later the ten-mill limitation, placed local governments at the mercy of the electorate in order to raise the rates on property. To make the situation worse the assessed valuation of property declined as a result of the depression. This, of course, meant lower yields even with existing rates. Many property owners were unemployed or their businesses were showing losses and they were unable to pay their taxes. In some urban centers tax delinquency ran as high as seventy per cent. New sources of revenue had to be found. With one or two exceptions our present tax system was constructed during the period 1931-1935.

It was pointed out above that the amendment (section two of Article XII), ratified in 1929, became effective January 1, 1931. Except for the changes required by the constitutional limitation of a rate of fifteen-mills on property, no other legislative changes were necessary.

The Eighty-Ninth General Assembly met in January, 1931. It was confronted with the problems resulting from depressed economic conditions and the new amendment. Senator Reynolds introduced a resolution, shortly after the session opened, providing for the appointment of "a special joint taxation committee."<sup>27</sup> It provided for the appointment of three Senators, three Representatives, "and if the governor so desires three others to be appointed by him." Governor White did not take advantage of this opportunity and the committee was made up of six members. State Senator Robert A. Taft was elected Chairman. That the legislature was not then aware of the effects which the Depression was having and would continue to have is clear from the resolution. It read, in part, as follows:

By far the greatest and most important question to be considered by this General Assembly is what legislation, if any, is necessary and should be passed pursuant to the tax amendment to the state constitution adopted at the election held in November, 1929, and to bring our statutes into harmony with that amendment. . . .

. . . . A special joint taxation committee, who shall prepare and introduce . . . such bills as they may agree upon, to provide for the raising of revenue from or by means of sales taxes, income taxes, or taxes on intangibles, or any other form or system which may seem desirable, and which will give to the people of this state an efficient, economic and just system of taxation as defined by the state constitution and the amendment of 1929.

The Reynolds resolution was adopted February 4, 1931. Near the end

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<sup>27</sup> Amended Senate Joint Resolution No. 7, 114 Ohio Laws 867 (1931).

of the session Senator Lewis introduced a resolution to continue the Joint Taxation Committee.<sup>28</sup> In less than five months after the Reynolds resolution was adopted the effects of the Depression were beginning to be felt. It is worth quoting, in part:

The taxing districts of the state face a serious situation arising out of the reduction of the general property duplicate and the reduction of their revenues for 1932, and . . . many other problems will arise during the putting into effect of the tax program enacted by this General Assembly, which will require supplemental corrective legislation, and . . . a permanent system of distribution of revenues from intangible property and motor vehicles must be adopted not later than 1933.

The Taft Committee took the ratification of the so-called Classification Amendment as a mandate to rewrite the whole property tax law. The results of their labor were embodied in Amended Senate Bill No. 323.<sup>29</sup> It was a seventy page document which brought about for the first time in the history of the State of Ohio the classification of personal property. The legislation contained in the statute was permanent except for the distribution sections. These were temporary, and the Committee was instructed to study the problem and bring before the Ninetieth General Assembly a solution. This was accomplished by Amended Senate Bill No. 30 in 1933.<sup>30</sup> It is little short of remarkable that the property tax acts of 1931 and 1933 have remained fundamentally unchanged for a quarter of a century.<sup>31</sup> They helped us weather, governmentally, the Great Depression of the nineteen thirties and have been flexible enough to yield greatly increased revenues to help meet the sky-rocketing demands of local governments since World War II.

By the end of the regular session of the Eighty-Ninth General Assembly it was clear that more revenues would be needed than could be obtained from property. This led to a new group of excises which were levied during the period beginning in 1931 and ending in 1935.

Although excises such as the corporation franchise, the public utility excise and the inheritance tax had been part of the state tax system, a new form of them appeared as the economic depression became more severe. These were selective sales taxes and, finally, a general sales tax. The gasoline tax, which is an example of the former, had been in existence since 1925 as a means of financing highways.

The General Assembly in 1932 evidently believed that the Depression and, consequently, the need for poor relief, would soon end. It

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<sup>28</sup> Senate Joint Resolution No. 36, 114 Ohio Laws 892, Adopted June 25, 1931.

<sup>29</sup> 114 Ohio Laws 714, approved by Governor White, June 29, 1931.

<sup>30</sup> 115 Ohio Laws, 548.

<sup>31</sup> The change in section 2 of Article XII from a fifteen-mill to a ten-mill limitation did involve some changes such as the mandated levy for schools to mention only one. There have been some changes in the distribution sections as well as slight changes made to facilitate or improve administration.

decided to permit the counties to issue bonds to finance such relief.<sup>32</sup> The legislature passed a temporary state-collected public utility excise tax.<sup>33</sup> The revenues from this source were distributed to the counties and had to be used to service the relief bonds, if issued.

Economic conditions did not improve and it was necessary to raise more money for relief. Again it was decided to permit the counties to issue poor relief excise bonds. To service the debt the General Assembly turned to selective sales taxes. Included were taxes on cosmetics and toilet preparations,<sup>34</sup> bottled beverages,<sup>35</sup> brewer's wort and malt,<sup>36</sup> and admissions.<sup>37</sup> These were new to the tax system of Ohio.

The repeal in 1933 of the Eighteenth Amendment to the Federal Constitution paved the way for new taxes on liquor and those operating establishments which produced and sold it.<sup>38</sup> The new liquor control act carried a number of new taxes on beverages which contained alcohol in excess of 3.2%.<sup>39</sup> This was fortunate from the point of view of revenue requirements because the electorate of the state had, by initiative petition, proposed a law to "provide for granting of aid to aged persons in the State of Ohio under certain conditions."<sup>40</sup>

The problem of keeping the public schools open became extremely serious. In fact some difficulty had been experienced in the period following World War I. The state government had a constitutional mandate to "encourage schools and the means of instruction."<sup>41</sup> As a result of the declining revenues from property taxes and the pressure on the state General Revenue Fund additional sources of revenue had to be found. The state had, many years earlier, set up an "educational equalization fund" for aid to weak school districts.<sup>42</sup> To support this

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<sup>32</sup> This was done to circumvent the necessity of proposing an amendment to Article VIII which would take considerable time. The first section of this Article permits an aggregate state indebtedness of only \$750,000. To change this requires an amendment. The electorate has amended this Article five times since World War I. Four of these have taken place since World War II. Three have provided "adjusted compensation" for veterans of World War I, World War II and the Korean "affair." The other two provide funds for highway construction and institutional and educational buildings.

<sup>33</sup> Amended Senate Bill No. 4, First Special Session, 114 Ohio Laws, Part II, 17.

<sup>34</sup> Amended Senate Bill No. 410, 115 Ohio Laws 649 (1933).

<sup>35</sup> House Bill No. 4, First Special Session, 115 Ohio Laws, Part 2, 5 (1933).

<sup>36</sup> House Bill No. 5, First Special Session, 115 Ohio Laws, Part 2, 5 (1933).

<sup>37</sup> Amended Senate Bill No. 411, 115 Ohio Laws 657 (1933).

<sup>38</sup> Repealed by the Twenty-first Amendment to the Constitution of the United States in 1933. Section 9 of Article XV of the Ohio Constitution prohibiting the manufacture and sale of intoxicating liquors was repealed November 7, 1933.

<sup>39</sup> House Bill No. 1, Second Special Session, 115 Ohio Laws, Part 2, 118 (1933).

<sup>40</sup> 115 Ohio Laws, Part 2, 431 (1933).

<sup>41</sup> Article I, §7. Also Article VI, §2, and Ordinance of the Northwest Territory, Article III (1787).

<sup>42</sup> Equalization of educational advantages appears first in 108 Ohio Laws,

fund a sales tax on cigarettes was enacted in 1931.<sup>43</sup>

By 1933 it was clear that aid to weak school districts was not enough. Practically every district in the state was in financial difficulty. A temporary solution was found by 1) decreasing each of the gasoline taxes by one-half cent and enacting a liquid fuel tax and 2) distributing the tax receipts from state situs intangibles—chiefly from financial institutions—to the schools on the basis of average daily attendance.<sup>44</sup> The receipts from the taxes on cigarettes, liquid fuel and state situs intangibles were later used to help finance the School Foundation Program.<sup>45</sup>

The ratification of the "ten-mill amendment" in 1933 meant a drastic reduction in tax rates unless levies were voted outside the limitation. This the electorate were unwilling to do in many instances. The General Revenue Fund of the state was pushed to the limit. The General Assembly provided for a study of the problem.<sup>46</sup> The Joint Legislative Taxation Committee carefully investigated the situation with respect to the finances of the State and its local governments. It examined the various existing sources of revenue as well as the possibility of tapping new ones.

Among the existing sources was an additional excise tax on public utility companies to sop up the gain of such establishments from lower property tax rates under the ten-mill limitation.<sup>47</sup> A graduated income tax on individuals was given thorough consideration and rejected for, at least, two major reasons. In the first place the progression would have to be inordinately steep to yield sufficient revenue. Secondly, the constitutional mandate that fifty per cent of the revenue must remain in the district of origin placed the legislature in a straight jacket.<sup>48</sup> About all that was left was a general sales tax of some sort.

A tax on retail sales had been considered by legislative committees and private organizations for several years. It had been rejected on the ground that it was very deflationary and, therefore, would aggravate an

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Part 2, 1303 (1919). The "educational equalization fund" was created by Substitute Senate Bill No. 160, 109 Ohio Laws 146 (1921).

<sup>43</sup> Amended Senate Bill No. 324, 114 Ohio Laws 805 (1931).

<sup>44</sup> On changes in the gasoline taxes and the enactment of the liquid fuel tax see Amended Senate Bill No. 62, 115 Ohio Laws 630 and Amended Substitute Senate Bill No. 354, 115 Ohio Laws 631, respectively. For the permanent distribution of the revenue from state situs intangibles see Amended Senate Bill No. 30, 115 Ohio Laws 582 (1931).

<sup>45</sup> House Bill No. 466, 116 Ohio Laws 585, approved June 12, 1935, effective January 1, 1936.

<sup>46</sup> Amended Senate Joint Resolution No. 3, First Special Session, adopted August 24, 1933, 115 Ohio Laws, Part 2, 102. It provided for eleven members: three senators, three representatives, and five citizens to be appointed by the Governor.

<sup>47</sup> House Bill No. 134, Second Special Session, 115 Ohio Laws, Part 2, 321, approved December 13, 1934.

<sup>48</sup> Article XII, §9 was amended in 1929. This section prevents the General Assembly from designing either good income taxes or death taxes.

already bad economic situation. As a last resort, however, the General Assembly did enact a retail sales tax.<sup>49</sup> After certain specific appropriations were made out of the receipts the remainder was to be divided between schools and local governments in the ratio of sixty per cent to forty per cent.

Although many of the excises mentioned above were to expire by limitation, this turned out to be a fiction as practically all of them continue to be a part of our tax system. Two fairly important revenue producers so far as the General Revenue Fund is concerned have been repealed. They are the liquid fuel tax,<sup>50</sup> and the admissions tax.<sup>51</sup> The yield of the retail sales tax was markedly reduced by a constitutional amendment ratified in 1936 which made it necessary to exempt "the sale or purchase of food for human consumption off the premises were sold."<sup>52</sup>

There are three other taxes which were enacted during the first half of the Thirties. Two of them have never been and are not great revenue producers while the third—the racing tax—has only recently become a real money yielder. The franchise tax on domestic insurance companies really formed a part of the new classification act of 1931.<sup>53</sup> The change in the date at which the lien attached to personal property from the day preceding the second Monday in April to January first made necessary some changes in such property as grain. The grain handling tax was enacted in 1935.<sup>54</sup> The horse racing tax became law in 1933.<sup>55</sup>

The rapid increase in the number of motor vehicles following World War II brought a demand for new and better roads and streets. In order to meet this situation as quickly as possible the General Assembly proposed an amendment to Article VIII by adding a new section 2(c).<sup>56</sup> It would permit the issuance of revenue bonds in the sum of five hundred million dollars. The required revenue was to be raised from "fees, excises or license taxes . . . relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles." This amendment was ratified at the November 3, 1933, election.

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<sup>49</sup> House Bill No. 134, Second Special Session, 115, Ohio Laws, Part 2, 306, approved December 13, 1934.

<sup>50</sup> Ohio Constitution, Article XII, §5(a) and Amended Senate Bill No. 358, 122 Ohio Laws 807, approved December 31, 1947. At the same time the two gasoline taxes were increased from one and one half cents each to two cents by House Bill No. 500, 122 Ohio Laws 809 (1947).

<sup>51</sup> House Bill No. 398, 122 Ohio Laws 459, approved June 20, 1947, effective October 1, 1947.

<sup>52</sup> Article XII, §12, effective November 11, 1936.

<sup>53</sup> 114 Ohio Laws 714, 753 (1931).

<sup>54</sup> 116 Ohio Laws 64 (1935).

<sup>55</sup> 115 Ohio Laws 171 (1933).

<sup>56</sup> Amended Substitute Senate Joint Resolution No. 5, 125 Ohio Laws 1082,

The legislature anticipated the ratification of the amendment and proceeded to enact two new taxes.<sup>57</sup> One was an additional one-cent motor vehicle fuel tax and the other a "third structure tax" on commercial motor vehicles popularly known as the "axle-mile tax." The revenues from these two sources were earmarked for "the state highway construction and bond retirement fund."

To sum up, a major change took place in the state's tax system during the early Thirties. This was the result of many factors among which were a desire to relieve property of the enormous burden which it carried in supporting the State and its local subdivisions; a new sense of social welfare as witnessed by aid for the aged and unemployment insurance; the economic depression which reacted upon the preceding and brought new problems such as the financing of relief and education. The ten-mill amendment practically compelled the state government to give up the property tax for state purposes. Education and relief had to be financed in some way and local property taxes were insufficient. The State was forced to aid local governments. To finance its own activities and, at the same time, give assistance to local units it turned to excises, chiefly consumption taxes. In some instances the State made outright grants but in others shared the receipts.

The tax system of Ohio has been roundly condemned, from time to time, as being regressive in its effects. No doubt this is true but to the "we owe it to ourselves" group it might be pointed out that we also pay highly progressive federal income taxes which must be considered. In any event the tax system which "jest grewed" to meet the needs of the Depression has thus far met the requirements of prosperity.

The State of Ohio and its local subdivisions appear to have reached the point where more revenues will be required. Can this be done with the present system which has been in existence for a quarter of a century? The answer appears to be in the affirmative. Following are a few suggestions:<sup>58</sup>

(1) Place all motor vehicles used in business on the general tax list and duplicate. This will yield considerable revenue to local governments.

(2) Increase the driver's license fee to an amount which will meet a larger share, if not all, of the fiscal requirements of the Department of Highway Safety.

(3) Remove the discrimination in the franchise taxes between domestic and foreign insurance companies.

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adopted July 9, 1953.

<sup>57</sup> Amended Substitute House Bill No. 619, 125 Ohio Laws 369, approved July 16, 1953.

<sup>58</sup> All suggestions are those of the writer and are not to be construed as the views of the College of Law or of the Ohio State University.

(4) Increase the franchise tax on business corporations.

(5) Reenact the admissions tax. After administrative costs have been deducted the remainder of the revenue should go to the municipality where the place of amusement is located or if outside a municipality to the county general fund.

(6) Repeal section nine of Article XII to permit the General Assembly to collect and distribute inheritance and income taxes as it sees fit.

(7) Amend sections seven and eight of Article XII by removing the constitutional requirements as to exemptions.

(8) Urge Congress to repeal the estate tax thus leaving it to the states. If this is not feasible then urge Congress to grant the eighty per cent credit of the revenues under the annual revenue bill to the state where the tax originates. The difficulty with the second method is that Congress may fail to make changes to meet changing requirements of the states as a whole.

(9) Rewrite in its entirety the act taxing the sales of tangible personal property sold at retail. Change from a tax on transactions to one on the gross receipts from sales at retail. Abolish the consumer's receipt. Eliminate so far as possible the exemptions and exclusions. This would permit the rate to be reduced to two or two and one-half per cent and yield as much or more revenue than now is being obtained. It would also be much easier to administer which would mean lower total cost and greater net revenue.<sup>59</sup>

Earmarking of a part of the revenue from the sales tax for local governments should be abolished and the appropriation from the General Revenue Fund substituted. If this is not deemed feasible then earmark the revenue from some sales tax group, such as the automotive, for these subdivisions. This would require very careful definition of the group designated. If accessories and the like are included it will lead to some administrative difficulties in the case of department stores, mail order houses and the like. These are not insurmountable. The revenues originating from this source in any given county would be turned over to the county budget commission for distribution among the local governments, excluding schools, according to need. This would give the localities a stake in the administration of the sales tax.

(10) Repeal the protected levies as required in section 5705.31, Revised Code. The hands of the county budget commission have been tied for nearly a quarter of a century. Greater flexibility in setting rates inside the ten-mill limitation is required.

(11) The power of a local government to contract debt within

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<sup>59</sup> See also Reports of the Department of Taxation of the State of Ohio, 1945, part II.



the ten-mill limitation should be denied. It will be argued that this power is needed in case of emergency. There is little reason to believe that local legislative bodies are actually doing this. Furthermore, it does not take much time to call a special election to place the question before the electorate. A much sounder method would be to set up some sort of state insurance fund in the custody of the Treasurer of State.

(12) The One Hundred Third General Assembly should, by resolution, provide for a commission to study revenues and expenditures of the State and its local governments. This commission should have the power to require detailed financial reports from the local units to be enforced by withholding state funds from any subdivision failing to cooperate.